

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Common Carrier Bureau Seeks Comment	)	CC Docket No. 99-200
on the Petition of the Connecticut Department	)	NSD File No. L-02-03
of Public Utility Control for Delegated Authority	)	
to Implement Transitional Service-Specific	)	
and Technology-Specific Overlays	)	

To: The Commission

**COMMENTS OF CINGULAR WIRELESS LLC**

J. R. Carbonell  
Carol L. Tacker  
David G. Richards  
CINGULAR WIRELESS LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342  
(404) 236-5543

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## SUMMARY

Cingular has supported the use of properly structured specialized overlays ("SO") on a transitional basis, and supports certain aspects of the CDPUC's proposal. In particular, the proposal properly recognizes that a specialized overlay should not include take-backs of geographically sensitive numbers, and should not require rationing once the overlay has been implemented.

Cingular urges the Commission to dismiss this petition without prejudice to the CDPUC's right to refile in a form that includes more specific details regarding the SO proposal, consistent with the Commission's criteria for such. The CDPUC's petition does not provide sufficient specificity to determine in many instances whether the criteria in the *Third Report & Order* have been met. This petition does not provide crucial details about the services that would be included in the SOs, why SOs would be more beneficial in these particular instances than all-services overlays, or how number take-backs would be used. The petition also proposes to handle the "transitional" nature of the overlays in a manner that is inconsistent with the Commission's guidance in the *Third Report & Order*. Accordingly, the proper treatment for this first petition for authority to implement an SO is dismissal without prejudice.

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To: The Commission

**COMMENTS OF CINGULAR WIRELESS LLC**

Cingular Wireless LLC ("Cingular"), a national provider of wireless services, submits the following comments in response to the petition<sup>1</sup> by the Connecticut Department of Public Utility Control ("CDPUC") for delegated authority to implement transitional service-specific and technology-specific overlays (collectively, "specialized overlays" or "SOs").<sup>2</sup> The Commission should dismiss this petition without prejudice to the CDPUC's right to refile in a form that includes more specific details regarding the specialized overlay ("SO") proposal, consistent with the Commission's criteria for such.

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<sup>1</sup> *Common Carrier Bureau Seeks Comment on the Petition of the Connecticut Department of Public Utility Control for Delegated Authority to implement Transitional Service-Specific and Technology-Specific Overlays*, Public Notice, DA 02-274 (rel. Feb. 6, 2002).

<sup>2</sup> *Numbering Resource Optimization*, Third Report & Order and Second Order on Reconsideration, CC Docket Nos. 96-98 and 99-200, FCC 01-362 (rel. Dec. 28, 2001) ("*Third Report & Order*") at para. 67.

Cingular has supported the use of properly structured SO proposals,<sup>3</sup> and supports certain elements of the CDPUC's proposal. Importantly, the CDPUC acknowledges the *Third Report & Order*'s principle that the public interest is not served if consumers are required to "turn back" their existing telephone numbers.<sup>4</sup> Additionally, the CDPUC proposes that the SOs and underlying NPAs will not be subject to rationing, thus assuring all carriers access to numbers based on their needs. As the Commission has noted, "any SO that achieves the purposes for which it is implemented (that is, the availability of numbering resources is increased for all carriers), should not need to be subject to rationing."<sup>5</sup>

The CDPUC's petition, nevertheless, does not provide sufficient specificity to determine in some instances whether the criteria in the *Third Report & Order* have been met.<sup>6</sup> In other instances, it appears that the petition may be inconsistent with those criteria. Under these circumstances, the Commission should dismiss without prejudice this first petition for authority to impose a specialized overlay.

**I. THE CURRENT PETITION CONTAINS INSUFFICIENT DETAIL TO EVALUATE ITS CONFORMITY WITH SOME OF THE COMMISSION'S CRITERIA FOR SPECIALIZED OVERLAYS**

In the *Third Report & Order*, the Commission reconsidered the ban on SOs, but stated that it "continue[s] to be concerned that placing specific services and technologies in SOs could

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<sup>3</sup> See, e.g., Comments in Response to Second Further Notice of Cingular Wireless LLC, CC Docket No. 99-200 (filed Feb. 14, 2001).

<sup>4</sup> *Third Report & Order* at para. 90.

<sup>5</sup> *Third Report & Order* at para. 93.

<sup>6</sup> *Third Report & Order* at paras. 67-94.

have an adverse impact on the affected customers and service providers.”<sup>7</sup> The Commission also noted that, “in some cases, SOs may not promote number efficiency.”<sup>8</sup> Accordingly, the Commission stated that it would consider specific SO proposals on a case-by-case basis.<sup>9</sup> Cingular is among the wireless carriers that have supported the concept of a “transitional” overlay under specified conditions to ensure available numbers to non-pooling carriers and to provide additional flexibility for area code relief.<sup>10</sup>

The Commission established certain criteria in the *Third Report & Order* to evaluate whether a given SO proposal properly balances the competing concerns inherent in SOs. In several important instances, the CDPUC’s petition does not contain specific information sufficient to determine whether it gives proper weight to the Commission’s competitive and numbering efficiency concerns.

**A. The Petition Does Not State Clearly What Technologies and Services Will be Included in the SO**

The petition initially notes that the CDPUC’s earlier filing had proposed only to include non-LNP-capable carriers in a specialized overlay.<sup>11</sup> The petition goes on to state, however, that it “concurs with the Commission’s suggestion that non-geographic-based services’ providers also

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<sup>7</sup> *Third Report & Order* at para. 71.

<sup>8</sup> *Id.* at para. 73.

<sup>9</sup> *Id.* at paras. 72-73.

<sup>10</sup> *See, e.g.,* Comments in Response to Second Notice of Cingular Wireless LLC, CC Docket No. 99-200 (filed Feb. 14, 2001).

<sup>11</sup> Petition at 4.

be included in the SO.”<sup>12</sup> The petition does not describe what sort of non-geographic services it would include in the SO.<sup>13</sup> This is important because there are issues that must be resolved before non-geographic services can be segregated in an SO. For example, there has not been a thorough opportunity for the public to comment on what services are truly non-geographic. The *Third Report & Order* lists the “OnStar” service as an example of a non-geographic application,<sup>14</sup> but OnStar has since argued to the Commission that its service in fact is geographically based.<sup>15</sup> Does the CDPUC propose to include OnStar in an SO? What about other telematics services that may be similar to, but somewhat different from, OnStar? How does the CDPUC propose to determine which services are truly non-geographic? In addition, the CDPUC would need to address how calls to and from services that are not assigned to a specific geographic area would be rated and billed with respect to other carriers, particularly incumbent local exchange carriers with state-defined local calling areas. None of these questions is addressed in the current petition.

Indeed, as is further illustrated by the lack of clarity regarding the proposed transition term for the SO,<sup>16</sup> the CDPUC needs to provide additional information to demonstrate how an SO or SOs will maximize numbering efficiency for different services and technologies. Thus,

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<sup>12</sup> Petition at 5.

<sup>13</sup> Instead, the petition reiterates arguments from the *Third Report & Order* regarding why, in a general sense, it may make sense to place non-geographic services in an SO. Petition at 5-6.

<sup>14</sup> *Third Report & Order* at para. 72 n.190.

<sup>15</sup> Letter from William L. Ball, Vice President, OnStar Corporation, to William F. Caton, Acting Secretary, FCC, dated Feb. 14, 2002 (CC Docket No. 99-200).

<sup>16</sup> See *infra* sections II. B. & C.

the petition should not be processed without more precise information about which services will be included in the SO.

**B. The Petition Does Not Address Why the Numbering Resource Optimization Benefits of an SO Would be Superior to an All-Services Overlay**

In the *Third Report & Order*, the Commission held that state commissions seeking authority to implement an SO should discuss “why the numbering resource optimization benefits of the proposed SO would be superior to the implementation of an all-services overlay.”<sup>17</sup> The petition does not contain any specific information comparing the use of an SO in a Connecticut NPA to the use of an all-services overlay. The petition does not include any analysis or projections of demand from the services that would be included in the SO (indeed, as noted above, it is not entirely clear what services would be included in the SO) to estimate whether segregation of that demand into an SO would affect the life of the underlying code, compared to an all-services overlay.<sup>18</sup> The petition does not address how its proposal will make more efficient use of numbers than would an all services overlay.

It appears from the petition that the CDPUC has yet to solidify its plans regarding SOs in Connecticut in order to ascertain whether an SO would be superior, from a numbering resource optimization perspective, to an all-services overlay.

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<sup>17</sup> *Third Report & Order* at para. 81.

<sup>18</sup> Indeed, as noted below, the petition’s proposal to continue to segregate non-pooling carriers in an SO even after they have become pooling-capable would have negative consequences for numbering resource optimization. *See infra* section II. A.



**C. The Petition Does Not Fully Clarify When Number Take-Backs Will be Used**

In the *Third Report & Order* the Commission stated that it “would likely favor service-specific overlays that include take-backs of non-geographic-based numbers, but . . . would likely oppose technology-specific overlays that would include take-backs of numbers that are geographically sensitive.”<sup>19</sup> Cingular fully supports CDPUC’s contention that the public interest would not be served if its customers are required to return their existing numbers. Returning existing numbers requires the reprogramming of phones in many instances which is an inconvenience to customers. The petition states that the CDPUC will employ number take-backs of unopened NXXs from the existing code. Additionally the petition indicates the CDPUC will work to assign subscribers TNs from the new SOs, presumably for services that are not geographically based.<sup>20</sup> As noted above, however, the petition as filed does not clearly specify how it will determine which services are non-geographic.<sup>21</sup> Thus, the public is unable to comment on, and the Commission will be unable to ascertain, whether the CDPUC’s proposed use of take-backs will be consistent with the guidelines in the *Third Report & Order*.

**II. THE PROPOSED SPECIALIZED OVERLAY TRANSITION TRIGGER IS INCONSISTENT WITH THE COMMISSION’S GUIDELINES**

The petition’s treatment of the triggering mechanism for the SO’s transition to an all-services overlay is inconsistent with the Commission’s guidance in the *Third Report & Order*.

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<sup>19</sup> *Third Report & Order* at para. 89.

<sup>20</sup> Petition at 7-8.

<sup>21</sup> *See supra* section I.A.

**A. The Petition Proposes to Leave Non-Pooling Carriers in the SO After They Begin Pooling**

As the Commission stated most recently in the *Third Report & Order*, the use of SOs for non-pooling carriers only serves number efficiency ends as long as those carriers cannot participate in number pooling.<sup>22</sup> Numbering resources will be used more efficiently if carriers can share numbers in the same number pools with all other carriers once they are able to participate in pooling. The continued segregation of previously non-pooling carriers in an SO would prevent such common pooling of numbers and thus waste valuable numbering resources. For this reason, the Commission stated that, “if state commissions propose a transitional SO that segregates non-pooling carriers into the SO NPA, they bear the burden of demonstrating why the transition should not occur when wireless participation in pooling commences.”<sup>23</sup>

Despite this guidance, the petition proposes to segregate non-pooling carriers into an SO,<sup>24</sup> but proposes to transition the SO to an all services overlay only upon exhaust of the underlying NPA.<sup>25</sup> As justification for this approach, the petition states that, because wireless carriers are due to begin pooling in less than twelve months, “it would be more practical to require the SO to become an all services overlay when the underlying NPA exhausts.”<sup>26</sup>

It would make little sense to implement an SO for non-pooling carriers mere months before they begin to pool. This is a reason not to segregate non-pooling carriers in an SO on the

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<sup>22</sup> *Third Report & Order* at para. 87.

<sup>23</sup> *Id.*

<sup>24</sup> Petition at 4-5.

<sup>25</sup> Petition at 7.

<sup>26</sup> Petition at 7.

eve of pooling implementation, however, not a reason to use an exhaust trigger instead. The reasons that the Commission identified in the *Third Report & Order* for not segregating carriers into a separate area code once they have begun pooling remain valid. Leaving wireless carriers in a separate NPA after wireless pooling commences would mean that wireless carriers only could share numbers in number pools with other wireless carriers. It would prevent wireless carriers' numbering needs from being satisfied with thousands-blocks lying fallow in landline carriers' inventories, and vice-versa.

The petition's proposal to continue to segregate currently non-pooling carriers in a separate SO after they have become pooling capable is inconsistent with the Commission's guidance in the *Third Report & Order* and would lead to inefficient use of numbering resources. The CDPUC has offered no justification for this proposed inefficient use of numbers. The foregoing is another reason why the Commission should dismiss the petition.

**B. The Petition Proposes a Permanent SO for Geographic Services, Including CMRS Services**

In the *Third Report & Order*, the Commission recognized the benefits of transitional overlays for reducing the potential discriminatory effect of SOs for geographic services, while providing additional flexibility for area code relief for particular technologies, such as non-pooling capable carriers. As a result, the Commission stated that it "favor[s] technology-specific overlays that are transitional" in nature and "service-specific overlays, particularly those that include non-geographic-based services, that are permanent in nature."<sup>27</sup>

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<sup>27</sup> *Third Report & Order* at para. 84.

In this case, the petition proposes to include both geographic, non-pooling-capable technologies (wireless) in the SOs, along with non-geographic services (without defining these). The petition describes its proposed SOs as “transitional,” but proposes to use exhaust of the underlying codes as the transition trigger, and states that, through the use of number conservation mechanisms, “the lives of the underlying NPAs should be extended indefinitely.”<sup>28</sup>

Thus, in effect, the petition proposes to segregate new customers of wireless carriers that use numbers for a geographically based service into a permanent, technology-specific overlay. This aspect of the proposal is inconsistent with the Commission’s guidance in the *Third Report & Order*, and would, as described above, lead to inefficient use of numbering resources.<sup>29</sup> After dismissal of the proposal, the CDPUC should work with carriers to develop alternatives for assuring that these SOs are a temporary, transitional means to the implementation of an all-services overlay.

### **III. BECAUSE THIS IS THE PRECEDENT-SETTING FIRST SPECIALIZED OVERLAY PETITION, THE CDPUC SHOULD PROVIDE ADDITIONAL INFORMATION BEFORE ITS PETITION WARRANTS BEING PROCESSED**

As the first state SO proposal to be filed with the Commission, this petition represents the Commission’s first opportunity to interpret its new guidelines for the potential implementation of SOs. That guidance calls for fully developed proposals, including specific information about particular issues, so that the Commission can determine, on a “case-by-case basis,” whether a given proposal properly balances the competing interests.<sup>30</sup> The Commission should have an

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<sup>28</sup> Petition at 7.

<sup>29</sup> See *supra* section II. A.

<sup>30</sup> *Third Report & Order* at paras. 72-74.

opportunity to apply its new guidelines in a meaningful fashion so as to provide useful guidance to carriers, states, and other interested parties about how SO proposals can be implemented, consistent with the Commission's numbering resource optimization goals.

As described above, this petition does not provide crucial details about the services that would be included in the SOs, why SOs would be more beneficial in these particular instances than all-services overlays, or how number take-backs would be implemented.<sup>31</sup> The petition also proposes to handle the "transitional" nature of the overlays in a manner that is inconsistent with the Commission's guidance in the *Third Report & Order*. Thus, while Cingular does not oppose the concept of SOs under certain conditions, the Commission should dismiss this petition at this time without prejudice to the CDPUC's right to refile in a more developed form. This will enable the Commission to begin a more fruitful jurisprudence regarding the deployment of SOs as an area code relief and number conservation strategy.

## CONCLUSION

The CDPUC is the first state to undertake the difficult task of crafting an SO proposal. Cingular supports various aspects of the CDPUC's plan. The petition reveals, however, that

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<sup>31</sup> Indeed, the petition appears more like the type of generalized petition that a state would file for prospective delegated authority to implement number pooling, rather than a specific proposal that would permit the "case-by-case" analysis described in the *Third Report & Order* for SO proposals. See *Third Report & Order* at para. 72.

further work remains to be done before the proposal is specific enough to be evaluated by interested parties or the Commission. Accordingly, the Commission should dismiss this petition without prejudice to the CDPUC's right to refile it later in a more complete form, consistent with the FCC's guidance in the *Third Report & Order*.

Respectfully submitted,

By: \_\_\_\_\_/s/  
J. R. Carbonell  
Carol L. Tacker  
David G. Richards  
CINGULAR WIRELESS LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342  
(404) 236-5543

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